IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

WP(C).No. 7450 of 2007(J)

AGAINST THE ORDER IN CMP.642/2007 IN
CMP.136/2007 of J.M.F.C.,VARKALA

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PETITIONER:

THANSEEL, S/O.SHAFI,
VADAKKEPULIMOODU,
VETTAKKADA JUNCTION
EDAVA.P.O, EDAVA VILLAGE.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.K.MOHANAKANNAN

RESPONDENTS:

SINI, S/O.SUHRA BEEVI,
MATHAVILAKAM, EDAVA.P.O
EDAVA VILLAGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

W.P(C).No.7450 of 2007

Dated this the 6th day of March, 2007

JUDGMENT

The petitioner is aggrieved by Ext.P6 order passed by the Judicial Magistrate of the First Class, Varkala. Before the learned Magistrate, the respondent herein initiated proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as `the D.V Act'). She asserted that she was the wife of the petitioner. She asserted that there was domestic violence against her. The respondent prayed for a protection order as also a monetary order under Sections 18 and 20 of the D.V Act. The petitioner entered appearance before the learned Magistrate. He raised various contentions. It would appear that the petitioner insisted that certain preliminary points may be decided. The learned Magistrate by the impugned order Ext.P6 considered some of the objections raised and ruled that the petition was liable to be proceeded with and appropriate order passed. The objection raised to maintainability was turned down by the learned Magistrate.

2. The petitioner has rushed to this Court with this petition under Article 227 of the Constitution. The petitioner contends that his plea that there was no marriage subsisting was not considered by the learned Magistrate as a preliminary issue. That issue regarding

maintainability must have been raised as a preliminary issue and decision rendered on that.

3. I am afraid that this contention cannot be accepted. The learned Magistrate, under the provisions of the D.V Act, is expected to give life to a piece of civil law administered through the structure created under the Code of Criminal Procedure. The nature of the relief which can be granted, the target group to which such relief can be granted, the circumstances under which such relief is to be granted must all impress on the functionaries under the statute the need for expedition in the disposal of a petition filed under Section 12 of the D.V Act. I am unable to agree that the provisions of the D.V Act contemplates different tiers of proceedings in the disposal of a petition under Section 12 of the D.V Act. The request to decide questions as preliminary issues based on disputed facts cannot obviously be entertained by the Magistrate. He has to consider the entire question and give decision as mandated under Section 12(5) of the D.V Act within a period of 60 days from the date of the first hearing. Of course, in an appropriate and exceptional case, where on admitted facts the petition is not maintainable, the Court will not be without jurisdiction to decide the issue of maintainability. Here the dispute raised is about subsistence or not of marriage. That question would certainly call for evidence to be adduced. I am certainly of the

opinion that the learned Magistrate committed no error in not accepting the request of the petitioner to decide that question as a preliminary issue. In fact the impugned order does not at all show that the said question was raised when the objection to maintainability was canvassed before the learned Magistrate. Be that as it may, I am satisfied that there is absolutely no necessity for this Court to invoke the powers under Article 227 of the Constitution or Section 482 Cr.P.C. I would observe that it was not necessary for the learned Magistrate even to consider the question of maintainability as a preliminary issue as done by him in Ext.P6. I am satisfied that the learned Magistrate must consider all contentions raised and dispose of the application under Section 12 of the D.V Act as expeditiously as possible - at any rate, within the stipulated period of 60 days.

4. This Writ Petition is, in these circumstances, dismissed with a direction to the learned Magistrate to dispose of the application under Section 12 of the D.V Act expeditiously. The Registry shall communicate this order to the learned Magistrate forthwith.

(R.BASANT, JUDGE)

rtr/-